APPEAL NO. 041301
FILED JULY 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 19, 2004. The hearing officer resolved the disputed issues by determining that the appellant (claimant) reached maximum medical improvement (MMI) on September 11, 2003, with a five percent impairment rating (IR) pursuant to the certification of the Texas Workers' Compensation Commission (Commission)-appointed designated doctor. The hearing officer further determined that the claimant has had continuous disability from September 12, 2003, through the present, and that since he has reached MMI, he is not entitled to temporary income benefits (TIBs) after September 11, 2003. The claimant appealed, asserting that he has not yet reached MMI so no IR can be assigned, and that he is entitled to further TIBs. In its response, the respondent (carrier) urges affirmance. The hearing officer's determination regarding the period of disability has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

Sections 408.122(c) and 408.125(c) provide that where there is a dispute as to the date of MMI and the IR, the report of the Commission-appointed designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record indicates that the hearing

officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Because we have affirmed the hearing officer's determination that the claimant reached MMI on September 11, 2003, we likewise affirm his determination that the claimant is not entitled to TIBs after that date. Section 408.102(a).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **SERVICE LLOYDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH KELLEY-GRAY, PRESIDENT**
**6907 CAPITOL OF TEXAS HIGHWAY NORTH**
**AUSTIN, TEXAS 78755**.

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Daniel R. Barry
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Veronica L. Ruberto
Appeals Judge